Appendix A

Point/Counterpoint on the Crime Victims Rights Amendment: Responses to Key Objections Raised by Opponents.

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by Steve Twist

National Network to End Domestic Violence
Position Statement on S.J. Res. 1 (undated)

1. While acknowledging the Avery real problems victims face in seeking justice,@ the Network concludes A[a] federal constitutional amendment ... is not likely to be the appropriate remedy... .@

The Network acknowledges, without enumeration, the Avery real problems victims face.@ Presumably the Network would not dispute the universal conclusion of the mainstream victims= rights movement and every administration since Ronald Reagan=s, including the administration of Bill Clinton, that those Areal problems@ include: the failure to receive notice of proceedings; being excluded during proceedings that others may attend; being silenced at critical stages including release, plea, sentencing, and clemency proceedings; the failure of the courts to consider the victim=s safety, interest in avoiding unreasonable delay, and claims to restitution; and the lack of standing to address these Areal problems.@ These conditions, which characterize the current justice system, are Areal problems@ that result in *real* injustice and cause *real* harm. Correcting these conditions of injustice is one of the core missions of the victims= movement.

The Network concludes that a federal constitutional amendment Ais not likely to be the appropriate remedy@ to correct the Avery real problems victims face.@ It is curious that an American organization would take such a view. Presumably the Network would agree that federal constitutional amendments were the Aappropriate remedy@for securing rights for accused and convicted offenders. Indeed, almost all the constitutional rights of defendants and convicted offenders were added as amendments to the United States Constitution. The Network does not provide its reasons for concluding that victims= rights should not be accorded a status equal to that of accused or convicted offenders. Perhaps this is because no fair or sound reasoning can support such a conclusion.

More than 20 years ago, in concluding that a federal constitutional amendment was necessary to protect the rights of crime victims, the President=s Task Force on Victims of Crime noted,

> The guiding principle that provides the focus for constitutional liberties is that government must be restrained from trampling the rights of the individual citizen. The victims of crime have been

> transformed into a group oppressively burdened by a system designed to protect them. This oppression must be redressed.

No less a constitutional scholar than Professor Larry Tribe of Harvard Law School, has pointed out that the rights proposed for crime victims in S. J. Res. 1

> are the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government processes that strongly affect their lives.

The Committee on the Judiciary of the United States Senate concluded that the Crime Victims Rights Amendment was consistent with

> the great theme of the Bill of Rights--to ensure the rights of citizens against the deprecations and intrusions of government--and to advance the great theme of the later amendments, extending the participatory rights of American citizens in the affairs of government.…[I]t is appropriate that victims' rights reform take the form of a Federal constitutional amendment. A common thread among many of the previous amendments to the Federal constitution is a desire to expand participatory rights in our democratic institutions. Indeed, the 15th Amendment was added to ensure African-Americans could participate in the electoral process, the 19th Amendment to do the same for women, and the 26th amendment expanded such rights to young citizens. … It is appropriate for this country to act to guarantee rights for victims to participate in proceedings of vital concern to them. These participatory rights serve an important function in a democracy. Open governmental institutions, and the participation of the public, help ensure public confidence in those institutions. In the case of trials, a public trial is intended to preserve confidence in the judicial system, that no defendant is denied a fair and just trial. However, it is no less vital that the public--and victims themselves--have confidence that victims receive a fair trial.

The National Governors Association in a resolution supporting a Federal constitutional amendment observed:

> The rights of victims have always received secondary consideration within the U.S. judicial process, even though States and the American people by a wide plurality consider victims' rights to be fundamental. Protection of these basic rights is essential and can

> only come from a fundamental change in our basic law: the U.S. Constitution.

Forty-three State Attorneys General, in supporting the Crime Victims Rights Amendment, wrote:

> Despite the best intentions of our laws, too often crime victims are still denied basic rights to fair treatment and due process that should be the birthright of every citizen who seeks justice through our courts. We are convinced that statutory protections are not enough; only a federal constitutional amendment will be sufficient to change the culture of our legal system.

Attorney General Reno, after careful study, reported that:

> Efforts to secure victims' rights through means other than a constitutional amendment have proved less than fully adequate. Victims' rights advocates have sought reforms at the State level for the past twenty years, and many States have responded with State statutes and constitutional provisions that seek to guarantee victims' rights. However, these efforts have failed to fully safeguard victims' rights. These significant State efforts simply are not sufficiently consistent, comprehensive, or authoritative to safeguard victims' rights.

Similarly, a comprehensive report from those active in the field prepared by the U.S. Department of Justice during the Clinton Administration concluded that "[a] victims' rights constitutional amendment is the only legal measure strong enough to rectify the current inconsistencies in victims' rights laws that vary significantly from jurisdiction to jurisdiction on the state and federal level."

Perhaps the Network knows more about our Constitution than Professor Tribe, every administration since Ronald Reagan's, the Department of Justice, a bi-partisan majority of the Senate Judiciary Committee, the National Governor=s Association, 43 State Attorneys General, and the mainstream of the victims= movement in the United States, but the reasons for such a conclusion are not evident.

2. We need Aan evolving understanding of the needs of victims,@ and A[a] constitutional amendment freezes in place, for all time, one set of solutions to the important issue of how to protect the rights of victims.@

Would the Network say that, because our understanding of the needs of defendants

needs to be Aevolving,@ that it would be wrong for a constitutional amendment to Afreeze@defendants rights? Surely not with a straight face. Yet why they consign victims to second class citizenship is unclear. Moreover, nothing about our understanding of the need for victims to have participatory rights need Aevolve.@ The need for these rights has been fixed and accepted for decades.

3. AThe amendment may destabilize the important constitutional balance protecting the rights of those accused of crime.@

Nothing in the amendment Adestabilizes@ rights for the accused. The right to notice of proceedings does not. (There is no constitutional right for a defendant to prevent a victim from receiving notice of court proceedings.) The right to notice of releases or escapes does not. (There is no constitutional right for a defendant to prevent a victim from knowing when he has escaped or is released.) The right to not be excluded does not. (There is no constitutional right for a defendant to exclude a victim from trial, even when the victim is also a witness.) The rights to be heard at release, plea, sentencing, and clemency proceedings do not. (There is no constitutional right for a defendant to silence a victim at these proceedings.) The right to consideration for the victims safety does not. (There is no constitutional right for a defendant to prevent a court from considering the victim=s safety when decisions are made. Indeed, victim safety is a legitimate and, according to the U. S. Supreme Court, a constitutional, consideration when making release decisions.) The right to consideration for the victim=s interest in avoiding unreasonable delay does not. (The defendant has a right to a fair and speedy trial and the right to counsel, which according to the U. S. Supreme Court, includes the right to an effective lawyer, meaning one that has had enough time to prepare a defense. But these rights do not prevent *consideration* of the victim=s interest in avoiding unreasonable delay.) The right to consideration for the victim=s restitution claims does not. (There is no constitutional right for a convicted offender to prevent the law from ordering restitution for the victim.) The right to standing to enforce these rights does not. (There is no constitutional right for a defendant to prevent a victim from asserting rights in court.)

4. AAmending the United States Constitution should be a remedy of last resort. Efforts should be made to enforce statutes that currently exist... .@

The amendment was first proposed over 20 years ago. It was proposed after considering decades of experience with a justice system that treated crime victims with increasing injustice. Instead of pursuing a federal amendment 20 years ago, the victim=s movement chose instead to seek state reforms. Significant efforts have been made to enforce state constitutional and statutory rights and those efforts have proven ineffective. Now as a Alast resort@ victims seek a federal amendment because only our fundamental charter has the power to change the culture of our criminal justice system, as has been proven throughout our country=s history, and by two decades of direct experience with

trying alternatives for victims= rights.

5. AThe proposed victim=s rights amendment provides little if any additional relief for victims. The amendment explicitly states that it creates no new grounds for a new trial and no additional claims for damages, making its passage an empty promise to victims dealing with the trauma and aftermath of crime.@

The Network may minimize the value of the rights established by the Crime Victims Rights Amendment (calling it Alittle if any additional relief@), but victims do not. In study after study, victims report that these participatory rights must be the core values of our justice system. The rights, in fact, are fully enforceable. The prohibition on seeking a new trial is without consequence because it does not prohibit the victim from seeking reconsideration of every other proceeding where a right may be denied. Money damages have never been a way to enforce rights which can only be enforced in the criminal case itself. Money damages require a separate, collateral civil proceeding that could never protect and enforce a right in a criminal case. The best and most direct method of enforcement of victims rights is the grant of standing written into Section 3 of the amendment. Perhaps the Network does not understand this means of enforcement because it does not litigate victims= rights cases. Standing is, in fact, the only effective means of enforcement. If the Network is concerned about Aan empty promise to victims,@ it should support enforceable constitutional rights over statutory rights that have proven to be unenforceable.

Pennsylvania Coalition Against Domestic Violence
Letter to Senator Arlen Specter, April 7, 2003

1. A... S.J. Res. 1 would fundamentally alter the nation=s charter with negligible benefits for victims... .@

The Coalition=s characterization of the rights established in the Crime Victims Rights Amendment as Anegligible benefits@ puts it far outside the mainstream of the victims= rights movement and more than two decades of experience and study. The Coalition may believe it is a Anegligible benefit@ for a domestic violence victim to be informed of the release hearing and the subsequent release of her batterer; the vast majority of domestic violence victims do not. The Coalition may believe it is a Anegligible benefit@ for the mother of a murdered child to not be excluded from the courtroom during the trial of the accused murderer; the vast majority of parents of murdered children do not. The Coalition may believe it is a Anegligible benefit@ for a rape victim to be heard on the matter of a plea bargain for her rapist; the vast majority of rape victims do not. The Coalition may think it is a Anegligible benefit@ for a battered woman to be able to speak, if she chooses, at the parole proceeding for her batterer; most victims do not. The Coalition may think the right to consideration of restitution or interest in avoiding unreasonable delay is Anegligible;@ most

victims do not. The Coalition may think that it is a Anegligible benefit@ to require that a battered woman=s safety be considered when release decisions are made; most battered victims do not. These views place the Coalition well out of the mainstream of the victims movement and standards of common sense and decency.

2. A... victims= rights can be sufficiently established through the development of state codes.@

The Coalition would relegate crime victims to second-class citizenship. Would the Coalition say the same thing about defendants= rights? Surely not. Why are victims less worthy of protection in the nation=s fundamental charter? Statutes have proven inadequate when confronted with the constitutional rights of the offender or the institutional inertia of the system. This is the universal conclusion of those who have studied the subject, including the U. S. Department of Justice.

3. AS. J. Res. 1 does not offer victims with adequate redress for a state=s failure to act.@

S. J. Res. 1 confers standing on victims to enforce their rights in criminal cases, which offers victims the only realistic means of enforcing their rights. This is exactly the same way in which defendants enforce their rights.

4. A[T]he Amendment will place enormous burdens on state and federal law enforcement agencies. ... Prosecutorial discretion could be seriously compromised if crime victims are given the ability to effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case in order to persuade a court to accept a plea.@

Giving victims the right to be heard at plea proceedings does not give victims Athe ability to effectively obstruct plea agreements or require prosecutors to disclose weaknesses in their case,@ as the Coalition asserts. No reading of the words of the amendment could lead to this conclusion. The right to be heard does not equate to the right to Aobstruct.@ The right to be heard is a voice and not a veto. There are now several states which allow victims to be heard at court proceedings in which plea bargains are submitted for approval to the court. In Arizona, this right has been exercised for more than a decade and it has not resulted in Aobstruction,@ nor forced prosecutors to disclose weaknesses in their case. In the real world these things just don=t happen. The Coalition=s conclusions are unfounded. Moreover, what standard of fairness or justice could possibly justify silencing the victim at this critical stage of a case? Does the Coalition really defend such injustice?

NOW Legal Defense and Education Fund
Position Statement Against Proposed Victims= Rights Amendment, July 2003

1. Although NOW Legal Defense agrees with sponsors of victims= rights legislative

initiatives that many survivors of violent crime suffer additional victimization by the criminal justice system, we do not believe a constitutional amendment is the appropriate way to address those problems. We appreciate the injustices and the physical and emotional devastation that drives the initiative for constitutional protection. ... After... particularly considering the circumstances of women who are criminal defendants, NOW Legal Defense cannot endorse a federal constitutional amendment elevating the rights of victims to those currently afforded the accused.

NOW=s admits that victims Asuffer@ in the criminal justice system but concludes that the suffering must continue because the rights of crime victims cannot be Aelevated@ to the rights Aafforded the accused.@NOW, in clear and unequivocal terms, abandons its self-appointed role to speak for all women, even women who are disproportionately victims of violent crime, and chooses instead to speak only for women who are criminal defendants, believing somehow that their rights to justice and fairness and due process are more important than the Asuffering@ victim. NOW becomes the National Organization for SOME Women, just not women who happen to be innocent victims of crime.

2. AIt is true that survivors of violence often are pushed to the side by the criminal justice system. They may not be informed ... they are excluded. They often experience a loss of control that exacerbates the ... impact of the crime itself. ... [I]ncreased efforts to promote victims= rights potentially could have a strong and positive impact on women who are victims of crime. ... notice of and participation in court proceedings, including the ability to choose to be present and express their views at sentencing, could be ... healing for victims. More timely information about release or escape and reasonable measures to protect the victim from future ... violence could improve women=s safety. Women could benefit economically from restitution. Nevertheless, because statutory protections and state constitutional provisions already may provide some or all of these improvements, because additional statutory and state level reform can be enacted, and because no reform will be effective absent strict enforcement, we do not support a federal constitutional amendment... .@

NOW concedes the benefits of securing rights for crime victims, but then relegates victims rights to second-class status through statutes or state constitutions, separate and unequal. NOW is content that victims sit in the back of the bus of legal rights; they dare not sit at the lunch-counter of the U.S. Constitution. NOW does not say why crime victims rights should be less deserving than the rights of accused and convicted offenders, nor how it is that second-class statutory rights are more subject to Astrict enforcement@ than federal constitutional rights would be. Yet these are the reasons that, while recognizing that victims Asuffer,@ they oppose real rights, federal constitutional rights for victims. NOW either does not know or does not care that efforts to secure rights for victims through statutory reforms or even state constitutional amendments have proven inadequate. These alternatives have been tried for the last twenty years and been found to be inadequate. NOW should have been

more thoughtful. They defend the contradictory position of saying victims Asuffer@ under the current system and that those same laws that create the current system are sufficient to stop the Asuffering.@

3. AAdding constitutional protections that could offset the fundamental constitutional protections afforded defendants marks a radical break with over two hundred years of law and tradition carefully balancing the rights of criminal defendants against the exercise of state and federal power against them.@

NOW does not know the history of our country. At the founding, and well into the 19th century, victims were there own prosecutors. As Alexis de Tocqueville observed well into the 1830's, the Aoffices of the public prosecutor are few.@ Under the common law victims had participatory rights. As the power to investigate and prosecute offenses became more and more concentrated in the monopoly power of the state, victims were excluded to the point where in many jurisdictions victims suffer the injustice of being treated just like another piece of evidence. In NOW=s calculus the rights of criminal defendants must be Acarefully balanced@ against the power of the state, but victims are ignored. The result is the very injustice that NOW purports to want to fix by statute. It won=t work. Victims, whose interest in justice and fair treatment is every bit as deserving as that of the criminal defendant, deserve better than to be relegated to the second class status NOW defends.

4. AThe position of a survivor of violence can never be deemed legally equivalent to the position of an individual accused of crime. ... While the crime victim may have suffered grievous losses, she, unlike the defendant, is not subject to state control or authority.@

The fact that a criminal defendant may lose liberty or life as a result of the commission of a violent crime is no reason to deny victims participatory rights through the criminal justice process. The assertion that victims are Anot subject to state control or authority@ is preposterous. When a victim is given no notice of proceedings in her case, when she is excluded from the courtroom during those proceedings, when she is silenced at critical stages, when her safety is not considered, nor her claims to restitution or interest in avoiding unreasonable delay, it is the state that is doing this to her, subjecting her to its power and authority. NOW chooses to ignore her subjugation.

5. AA victims= rights constitutional amendment could undercut the constitutional presumption of innocence by naming and protecting the victim as such before the defendant is found guilty of committing the crime.@

In NOW=s view of justice a battered woman does not even deserve to be Anamed@ a victim before a verdict convicting her batterer is returned. This view is so far outside the mainstream of advocacy for women who are victims of violent crime that it does not deserve serious attention. The presumption of innocence is not Aundercut@ when a battered

woman is given the right to notice of proceedings, the right to attend those proceedings, or the right to be heard at release, plea, sentencing, and clemency proceedings. The presumption of innocence is not Aundercut@ when a woman=s safety is considered when release decisions are made, or when her claims to restitution or avoiding unreasonable delay are considered. The presumption of innocence requires simply that the burden falls to the government to prove, by probative evidence, the defendant=s guilt beyond a reasonable doubt; that defendants are not required to prove their innocence.

6. AAmendment proposals leave undefined numerous questions ranging from the definition of a >victim= to whether victims would be afforded a right to counsel, or how victims= proposed right (sic) to a speedy trial would be balanced against defendants= due process rights.@

AVictim@ is always defined by a statute creating an offense, or by other relevant state or federal statute. Loved ones are included in the phrase Alawful representative.@ The proposed amendment does not include a Aright to counsel@ as does the 6th Amendment for criminal defendants. The amendment does not propose a Aright to a speedy trial@ for crime victims, rather simply a right to have the victim=s Ainterest in avoiding unreasonable delay@ considered. Surely NOW does not believe that such consideration is unfair or somehow compromises the rights of accused or convicted offenders?

7. The amendment would Ainject an additional party (the victim and her attorney), to the proceedings against a defendant as a matter of right, increasing the power of the state and potentially diminishing the rights of the accused, particularly in the eyes of the jury.@

A crime victim would not become Aan additional party@ in the criminal case in which she exercises the rights proposed in the Crime Victims Rights Amendment. *Lynn v. Reinstein*, 68 P.3d 412 (Ariz. 2003). The fact that a victim is present and may be heard at critical stages does not Aincrease the power of the state,@ nor diminish the rights of the accused. The amendment does not give the victim an independent right to speak at trial, before the jury, and the concerns of NOW to the contrary are unfounded. The mere presence of the victim in the courtroom during trial does not infringe on the rights of the accused, as the case reported in NOW=s own statement (fn. 1) clearly shows.

8. AThe demonstrated existing inequalities of race and class in the modern American criminal justice system only increase the importance of defendants= guaranteed rights.@

Those same inequalities, to the extent that they exist, are magnified for victims who have no federal constitutional rights to protect them. NOW=s concern for equality once again only applies to SOME.

Letter from Law Professors
Regarding the Proposed Victim=s Rights Constitutional Amendment, July 17, 2003

1. AThere is no pressing need for a victim=s rights amendment, as virtually every right provided victims by the amendment can be or is already protected by state or federal law.@

When James Madison took to the floor of the U.S. House of Representatives and proposed the Bill of Rights, during the first session of the First Congress, on June 8, 1789, he was not without his critics. The law professors are oddly reminiscent of those critics.

Madison=s opponents claimed the twelve amendments he proposed were unnecessary, especially so in the United States, because the states had bills of rights. Madison responded with the observation that "not all states have bills of rights, and some of those that do have inadequate and even 'absolutely improper' ones."

Our experience in the victims' rights movement is no different. Not all states have constitutional rights, nor even adequate statutory rights. These laws have failed, despite our best efforts, to protect victims. Harvard Professor Larry Tribe, perhaps the nation=s pre-eminent scholar of constitutional law, has observed this failure : "...there appears to be a considerable body of evidence showing that, even where statutory or regulatory or judge-made rules exist to protect the participatory rights of victims, such rights often tend to be honored in the breach...." As a consequence he has concluded that crime victims' rights "are the very kinds of rights with which our Constitution is typically concerned."

James Madison knew why the constitution had to protect the rights proposed in the Bill of Rights. He observed that the constitution would "have a tendency to impress some degree of respect for [the rights], to establish the public opinion in their favor, and rouse the attention of the whole community ... as [they] acquire, by degrees, the character of fundamental maxims. . . as they become incorporated with the national sentiment ... ."

After years of struggle, we now know that the only way to make respect for the rights of crime victims "incorporated with the national sentiment," is to make them a part of "the sovereign instrument of the whole people," the Constitution. Just as James Madison would have done it.

2. AThe Amendment could lead to burdens on courts and prosecutors ... .@

The law professors surely would not argue that because the amendments that established rights for criminal defendants led to Aburdens on courts and prosecutors@ that they should be repealed. No indication is given as to why in their view victims are to be accorded an inferior status in our law. Is Aburden on courts and prosecutors@ to be a trump

card that stops consideration of amendments otherwise necessary to establish fairness and justice in the operation of our criminal courts? Is this truly the standard for amending the constitution that the law professors would erect? Perhaps the law professors do not know or discount the Aburden@ on victims created by the present justice system. ABurdens@ of injustice in our country=s history typically have been lifted through amendments to our constitution.

3. ATh[e] adjudicative decisions provision appears to create a right to special hearings on these issues (safety, delay, and restitution), separate from other proceedings. It also appears to require additional judicial orders and decisions. This could result in separate substantive proceedings, burdening an already burdened court system.@

The law professors are wrong about the Aappearance@ and the substance of the adjudicative decisions clause. It does not create a right to Aspecial hearings@ but rather, as the text explicitly reads, the right to decisions, when made, that reflect Adue consideration@ for the identified victim=s interests. The emphasis in the text is on Adue consideration@ for the victims interests whenever those interests are implicated in proceedings throughout the case. The legislative history also makes this clear.

4. AThe [adjudicative decisions clause] may involve the courts in monitoring the choices of police and corrections officers in the interest in safety. It could lead to standardless determinations of an accused=s dangerousness throughout the process as well.@

On page one of the law professors= letter, as a reason for why the proposed amendment is unnecessary, they write, AVictim safety as a consideration in pretrial release already exists under federal and state law.@ Presumably then, for the law professors, it is acceptable for this right to be in statute, just not in the constitution. There is no reason to believe that the phrase Adue consideration for the victim=s safety@ could lead to Astandardless determinations of an accused=s dangerousness@ any more than the current law, which the professors do not criticize, has led to the undesired result. Indeed, the courts in fact have standards to decide such cases. *See U.S. v. Salerno,* 481 U.S. 739 (1987). Moreover, the misreading of the plain text is breathtaking. Under no circumstances could the phrase Aadjudicative decisions@ (Aadjudge:@ to determine or decide judicially, as a case) be construed to cover decisions by police or corrections officers. Not even the most ardent exponents of a Aliving constitution@ doctrine of interpretation could stretch the meaning of these plain words that far.

5. Under Section 2 as written, a victim could demand a special judicial hearing whenever the victim asserted an interest in Aavoiding unreasonable delay.@

The right proposed is a right to Adue consideration@ when issues come before the court for Aadjudicative decisions@ that implicate the victim=s stated interests. This text does not create

a right to demand Aspecial judicial hearings@ but rather the simple right to ask that consideration be given to the victim=s interests when already scheduled decisions are to be rendered.

6. [The ›avoiding unreasonable delay clause=] could be used to deny defendants needed time to gather and present essential evidence in order to demonstrate their innocence of the crime charged. It could also impair a prosecutor=s ability to develop the evidence necessary to prove guilt beyond a reasonable doubt.@

No intellectually honest assessment of the plain meaning of the proposed text could lead to these conclusions. Here is the text: AA victim of violent crime shall have the right to ... adjudicative decisions that duly consider the victim=s ... interest in avoiding unreasonable delay... .@ Perhaps the law professors= analysis is driven more by their political opposition to rights for victims than the pure pursuit of knowledge or academic integrity. What else can explain the transformation of these words, Aduly consider@ and Aunreasonable delay,@ into a straight jacket that would A**deny**@ to an accused Aneeded time@ to present Aessential evidence@ to demonstrate Ainnocence.@ Would Aneeded time@ be Aunreasonable delay?@ Is the right to have an interest Aduly considered@ the right to Adeny?@ These questions answer themselves. It is regrettable the law professors even posed them. The right to have an interest in avoiding **unreasonable** delay **duly** considered is not the right to veto or force anything.

7. AThe right of victims to be ›reasonably heard= at plea proceedings could hamper prosecutorial efforts. How much weight judges must give to a victim=s objection to a plea is uncertain, because the Amendment is not clear whether the state must demonstrate a ›compelling= or ›substantial= interest in the bargain and how a judge should evaluate valid prosecutorial concerns. ... Even a small increase in trials because of victim objections would impose heavy burdens on prosecutor=s offices and the courts.@

One hardly knows where to begin to address the manifest errors in this passage. One would think that professors, even law professors, would offer views that had some grounding in empirical research, but such hopes are not to be fulfilled in the law professors= text. First the law professors should have looked to those jurisdictions where the victim=s right to be heard during plea proceedings has been a part of the system before speculating that such a right Acould hamper prosecutorial efforts.@ In Arizona victims have exercised such a right for more than a decade and it does not Ahamper@ prosecutions. Perhaps that is why, reporting on their experiences, both the Pima County Attorney (a Democrat) and the Maricopa County Attorney (a Republican) have testified in support of the amendment.

How much weight judges give to the views of the victim will be up to what the judge determines to be in the Ainterest of justice.@ That is the universal standard the courts follow in determining whether to accept or reject a plea agreement; it must be in the Ainterest of

justice.@ If it is not the court will reject it. Surely the law professors do not begrudge the victim a voice in the matter of whether a plea agreement is in the Ainterest of justice.@ Apparently they do, but no developed and fair concept of justice would deny to the court the view of the victim, as long as it is a voice and not a veto.

The amendment=s restrictions clause establishes two standards for restricting the rights of victims, Asubstantial interest@ and Acompelling necessity.@ Application of either standard depends on the interest to be balanced, with the lower standard of Asubstantial interest@ applying to matters of Apublic safety@ and the Aadministration of criminal justice.@These provisions have nothing to do with and do not in any way govern a prosecutor=s decision to offer a plea agreement. Once again the law professors have simply failed to read the plain words of the proposed amendment. The amendment does not give victims a right to veto plea agreements, nor does it impose on prosecutors any duty to justify a Arestriction@ of the victims' non-existent right.

There have been no increases in the rate of cases going to trial in Arizona because of the victim=s right to be heard at plea proceedings, a fact the law professors should have known. Indeed, nowhere is such an increase documented. At best the law professors are erecting a straw man; at worst they are guilty of poor scholarship.

8. A The right to be heard might well create a right to... state-provided counsel... .@

The ***right to counsel*** explicitly written into the 6th Amendment creates the ***right to state-provided counsel*** for accused and convicted offenders. There is **NO *right to counsel*** written into the Crime Victims Rights Amendment, and none can be inferred.

9. AThere are serious dangers in amending the Constitution in the manner provided by S. J. Res. 1.@

There is only one Aserious danger@ suggested by the law professors. The language of the amendment, they write, Adoes not explicitly protect defendant=s rights from abridgement under the Amendment. ... At best [the language of the amendment] suggests that courts would have to engage in a case-by-case balancing of the rights of the accused and the rights of the victim.@

It is telling that the law professors do not identify a single constitutional right of an accused or convicted offender that would be Aabridged@ by the proposed amendment. Not one. In fact, nothing in the proposed amendment will Aabridge@ the fundamental rights of defendants.

Giving the victim the right to certain notices infringes on no right of the defendant. Allowing the victim the right not to be excluded does not "abridge" any constitutional right

of the defendant. Allowing the victim the right to a voice at release, plea, or sentencing proceedings does not deny a constitutional right to the defendant, but it does allow the court to make more informed and just decisions. Defendants do not have a constitutional right to refuse or avoid restitution for the economic losses they cause to their victims. Defendants have a right to effective counsel, but they have no right to *unreasonably* delay proceedings. Requiring the court to consider the interests of the victim in avoiding unreasonable delay does not deny any constitutional right of the defendant. Defendants have no right to prohibit a court or parole authority from considering the safety of the victim when making release decisions, and requiring the safety of the victim to be considered does not infringe any right of the defendant.

When considered in the light of reason, and not emotion, vague assertions that "fundamental constitutional rights will be undermined," have little value other than to inflame the debate. The amendment is not an assault on the fundamental rights of the defendant. In the justice system, throughout the country, rights for those involved are not "a zero-sum game." Rights of the nature proposed here do not subtract from those rights already established; they merely add to the body of rights that we all enjoy as Americans.

Professor Tribe concurs in this analysis when he writes, "no actual constitutional rights of the accused or of anyone else would be violated by respecting the rights of victims in the manner requested."

And what of the balancing the law professors fear? The courts of our nation are fully capable of balancing the rights of victims and the rights of offenders, giving full effect to the rights of each. Law professors, of all people, should know this and respect this.

10. ASection 3 explicitly forbids courts or Congress to provide money damages to victims for violations of their rights. The creation of a constitutional right without a meaningful remedy for many contradicts one of the very principles of justice B that for violation of a right there must be a remedy. Injunctive relief for denial of rights, while possible under the amendment, may often provide an inadequate remedy, and bringing injunctive actions against courts and prosecutors would create additional uncertainty in the criminal justice process.@

Money damages would not be an effective means of enforcing victim=s rights. That the amendment does not make them a remedy inherent in the constitutional text is inconsequential, even as money damages have not been an effective or preferred means of enforcing rights of the accused. The preferred remedy is expressly included in the text of the proposed amendment: standing. The grant of standing in Section 3 means that victims will have the right to Astand@ in court and ask for orders to protect their rights. The law professors, without explanation, dismiss this as Ainadequate.@ Yet it is the way in which defendants= rights are enforced. If absolute Acertainty@ were the test for constitutional

amendments none would have ever passed.

11. ASection 3 of the amendment not only subjects state criminal proceedings to congressional oversight, but also creates new burdens on the federal courts to interpret and apply the Amendment.@

The power to Aenforce@ the rights established is not the power to Aoversee@ state criminal proceedings. The power to enforce is not the power to define or implement. The defendant=s rights to due process and equal protection, grounded in the 14th Amendment, are subject to the very same enforcement clause language and it has not led to Acongressional oversight@ of state proceedings. Federal courts are surely up to the Aburden@ of making decisions interpreting the rights established. They in fact are very straightforward. And the Aburden,@ if indeed it is one, should be borne when the demands of justice require it, as they do now for crime victims.

12. AVictims of economic crimes ... would have no constitutional rights.@

...nor would the law professors support them. Enough said.

Letter from Safe Horizons
April 7, 2002

1. AVictim=s rights are critical but not the same as defendant=s rights.@

Safe Horizon=s admits that Aparticipatory rights [for victims] are essential to help them achieve justice.@ The way in which our country has historically ensured Aessential@ Aparticipatory rights@ is through the U. S. Constitution. As Prof. Tribe has explained, the rights proposed for crime victims in S. J. Res. 1 Aare the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government processes that strongly affect their lives.@ Perhaps what Safe Horizons is saying is that, in their view, the victim=s rights should be less worthy than the defendant=s because, as they write, defendants Aface the loss of fundamental rights and liberty at the hands of the government.@ Surely Safe Horizons knows that when their own victim clients are denied notice of proceedings, excluded from proceedings, silenced at proceedings, and when their victims= interests in safety, delay, and restitution are ignored, it is the government that does these things, the government that denies these Afundamental rights and liberty@ of crime victims. These Aessential@ rights, as Safe Horizons calls them, do not come at the expense of defendants= rights, as Safe Horizons fears, and can only be secured for all victims through a federal constitutional amendment. As Attorney General Reno earlier testified in the House, "[U]nless the Constitution is amended to ensure basic rights to crime victims, we will never correct the existing imbalance in this country between defendants' constitutional rights and the haphazard patchwork of victims' rights."

2. AConstitutionally recognized rights for victims and defendants inevitably will clash. One of Safe Horizon=s fundamental concerns with S. J. Res. 1 is that it could erode the rights of the accused, particularly when they are in tension with the rights of the asserted victim. ... For example, in New York State (as elsewhere), potential witnesses are routinely excluded from the courtroom so that their testimony will not be tainted by that of other witnesses and unfairly prejudice the defendant. The proposed amendment squarely poses a conflict because it grants a victim the right not to be excluded from the proceedings which is particularly problematic where the victim is also a witness, forcing the judge to weigh the defendant=s right to a fair trial against a victim=s newly created right not to be excluded.@

No passage could better expose the challenges that victims face and the need for a national threshold of rights for crime victims. Perhaps Safe Horizons does not know that a criminal defendant has no constitutional right to exclude a victim from the courtroom during trial, even if the victim is also a witness. Perhaps, because the practice of Ainvoking the rule@ of exclusion of witnesses is so pervasive that Safe Horizons assumed it was a constitutional right of the defendant to exclude the victim from the courtroom. The courts have held otherwise, for example, *Bellamy v. State*, 594 So.2d 337 (Fla. 1992) (cited in NOW=s fn. 1, supra, Amere presence of the victim in the courtroom in a sexual battery case would not prejudice the jury against the defendant.@) and *State v. Beltran-Felix*, 922 P.2d 30 (Utah App., 1996). And in those jurisdictions which permit victims, even as witnesses, to be in the courtroom throughout the trial, there is no evidence of defendants being Aunfairly prejudiced.@ Indeed, no appellate case in Arizona, for example, has ever reached such a conclusion in 12 years of the right being written into the law. In Alabama, victims sit at the counsel table with the prosecutor. But because the predominant culture of the criminal justice system in ANew York State (as elsewhere)@ requires that victims be Aroutinely excluded from the courtroom,@ it did not even occur to Safe Horizons to think that anything else was possible. How sad for victims in New York that Safe Horizons remains so hidebound to the way things are. Sadly, this is the way things are in most of America. For victims, the way things are must change and only the constitution, the law of all of us, has the power to change them, to change the culture.

3. AVictims of domestic violence are especially at risk. ... Under S. J. Res. 1, the batterer whose false accusations result in prosecution of the victim could be accorded >victim= status and could benefit from all the proposed Constitutional rights. The same concern applies to cases in which domestic violence victims strike back at their batterers... .@

Victims of domestic violence have much to gain and nothing to fear from the Crime Victims Rights Amendment. A battered woman needs the right to notice of release proceedings and releases. A battered woman should not be forced to endure the dehumanizing experience of being excluded from public court proceedings. A battered

woman needs the right to choose whether to speak about her victimization at release , plea, and sentencing proceedings. A battered woman needs the right to demand that her safety be considered when release decisions are made. A battered woman needs the right to have her claims for restitution considered and her case should not be subjected to unreasonable delay. For the vast majority of battered women these rights are critically important. Advocacy for battered women demands advocacy for these rights.

At the same time, the fear that victims= rights might be used against victims of domestic violence who strike back at their batterers or who are falsely accused of crimes, is unfounded in jurisdictions where these rights are established. Moreover, the text of the amendment makes it clear that even victims rights may be restricted when public safety concerns are an issue, so no woman would be put in jeopardy of her safety because of any of the amendments provisions. The concerns of Safe Horizons about the construction of the restrictions clause are easily answered. The issue of the application of a restriction would arise as the right was invoked and would be resolved accordingly. No waiver of a 5th Amendment right would ever be required for a battered woman to assert a substantial interest in safety. Safe Horizons tilts at windmill fears in a small minority of cases, while the majority of battered women are seemingly ignored.

4. AWe believe that considerable progress with respect to victims= rights has been made in New York and elsewhere in recent years... .@

This comment is reminiscent of the famous *New Yorker* magazine cover where, from Manhattan, the rest of the country looks compressed and trivial. Perhaps this is how the criminal justice system looks to them, but Aconsiderable progress@ remains elusive in the country we know, and the injustices done to victims, which continue Ain New York and elsewhere@ are neither compressed nor trivial.

5. Citing the experiences of the September 11 attacks, Safe Horizons writes, AThese experiences reinforce the importance of carefully balancing defendant=s rights and victim=s rights.@

It is unclear just how the experiences of September 11 reinforce the importance of balancing defendants= and victims= rights, and Safe Horizons does not elaborate on the point. Their argument was rejected even by other critics of the amendment. The law professors themselves concluded that the language of the proposed amendment would allow the courts Ato engage in a case-by-case balancing of the rights of the accused and the rights of the victim.@

6. A...the proposed amendment would at best be symbolic, and at worst harmful,... it could prove meaningless for the majority of victims whose cases fail to be prosecuted.@

The rights proposed are meaningful and enforceable and embody the participatory rights that have been the core values of the mainstream victims= movement for more than 20 years (therefore not Asymbolic=) and will not abridge the rights of the accused, nor hurt innocent victims (therefore not Aharmful@). As for cases that are not prosecuted, would Safe Horizons have taken up opposition to the Bill of Rights on the grounds that most offenders are not caught so they would be of little value? One suspects not.

ACLU
Statement in Opposition, June 9, 2003

1. AThis amendment would fundamentally alter the nation=s founding charter and would apply to every federal, state, and local criminal case, profoundly compromising the Bill of Rights protections for accused persons.@

Nothing in the proposed amendment Acompromises@ the Bill of Rights, at all, much less Aprofoundly,@ and while it would Aalter the nation=s founding charter@ (as all amendments do) and while it would Aapply to every... criminal case,@ one would hope that the extension of new Acivil liberties@ to criminal cases is not something that would be opposed by an organization that promotes civil liberties.

2. AMany of these provisions reflect laudable goals, but it is unnecessary to pass a constitutional amendment to achieve them. Every state has either a state constitutional amendment or statute protecting victims= rights and the proponents have not made the case that those measures do not protect victims= interests. More importantly, providing these >rights= to defendants will compromise the rights of the accused. It would be the first time in our nation=s history that the Constitution was amended in a manner that restricted individual rights.@

The ACLU acknowledges that the goals of the amendment are Alaudable,@ but that the goals may be achieved without a constitutional amendment. The ACLU suggests that state laws are sufficient. Then in the very next sentence the ACLU says these very same Alaudable goals@ will compromise the rights of the accused and Arestrict individual rights.@ The ACLU cannot have it both ways. If the goals (participatory rights for crime victims) are Alaudable,@ and they are, the goals should be worthy of inclusion in the U. S. Constitution because they, as Prof. Tribe says, Aare the very kinds of rights with which our Constitution is typically and properly concerned--rights of individuals to participate in all those government processes that strongly affect their lives.@ The case to include the rights in the constitution has been made with sufficient force to convince most of the country, including every Administration since Ronald Reagan=s, including the Clinton Administration, the Department of Justice, a bi-partisan majority of the Senate Judiciary Committee, the National Governor=s Association, 43 State Attorneys General, the mainstream of the victims= rights movement, and the vast majority of the American people. That the ACLU remains unconvinced is

simply evidence that they do not want to be convinced.

The rights proposed do not Acompromise@ the rights of the accused, they simply add to the civil liberties that we all enjoy as Americans, which is why it is strange that the ACLU would characterize the amendment as Arestricting individual rights.@ The amendment=s Section 2 begins: AA victim of violent crime shall have the right... .@ By its plain terms the amendment extends rights, it does not Arestrict@ them.

3. AIf passed, the Amendment would erode the presumption of innocence; jeopardize the right to a fair trial; hamper the ability of law enforcement to effectively prosecute cases; discriminate between victims and impose legal liability on the states.@

A*...erode the presumption of innocence...*@

The ACLU contends that the amendment Aundermines the presumption of innocence by conferring rights to the accuser at the time a criminal case is filed when the accused is still presumed to be innocent. ... But giving the accuser the constitutional status of victim will impact the judge and jury, making it extraordinarily difficult for fact finders to remain unbiased when the >victim= is present at every court proceeding giving his or her opinion as to what should happen. The VRA makes the accuser a third party in the criminal case, even before a judge or jury has determined that the accuser is actually a >victim.=@

The ACLU displays a lack of understanding about the nature of the presumption of innocence. To be sure, as the Supreme Court has said, the presumption of innocence Alies at the foundation of the administration of our criminal law.@ The court has held that A[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial…. [C]ourts must carefully guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt. @ *Estelle v. Williams*, 425 U.S. 501 (1976). The presumption of innocence is a principle that demands that guilt be established by the government Abeyond a reasonable doubt.@

Nothing in the proposed amendment alters in any way the burden of proof beyond a reasonable doubt that the government must establish to the satisfaction of the jury.

In the ACLU=s view of justice a battered woman does not even deserve to be Anamed@ a victim before a verdict convicting her batterer is returned. This view is so far outside the mainstream of advocacy for women who are victims of violent crime that it does not deserve serious attention. The presumption of innocence is not Aundermined@ when a battered woman is given the right to notice of proceedings, the right to attend those proceedings, or the right to be heard at release, plea, sentencing, and clemency proceedings. The presumption of innocence is not Aundermined@ when a woman=s safety is considered when release decisions are made, or when her claims to restitution or avoiding unreasonable delay are considered. The presumption of innocence requires importantly, but

simply, that the burden falls to the government to prove, by probative evidence, the defendant=s guilt beyond a reasonable.

There is no evidence that giving victims participatory rights undermines the process to fairly determine guilt or innocence. In the small number of jurisdictions where victims have had these rights for years, they have never been found to undermine the right to a fair trial. While victims would have the right to be present during certain court proceedings, they would not, as the ACLU suggests, have the right to give their opinion about what should happen at Aevery court proceeding.@ For example, under the amendment victims have no independent right to be heard at trial. Victims are not Athird parties,@ as the ACLU asserts, merely because in selected proceedings they have the right to be heard on limited matters affecting their constitutional interests. Finally, if indeed the ACLU thinks these participatory rights are Alaudable goals@ that may be accomplished by statute, as they say they do, the very same Astatus@ would be afforded to victims by statute.

The ACLU writes A...battered women are often charged with crimes when they use force to defend themselves against their batterer. Under the VRA, the battering spouse is considered a >victim= and will have the constitutional right to have input into each stage of the proceeding from bail through parole. *Why should batterers who have spent years abusing their partners be given special constitutional rights*?@ (emphasis added.) Here the hypocrisy of the ACLU is astonishing, for it is the very same ACLU that defends the very same batterer=s Aspecial constitutional rights@ when that Abatterer@ is a criminal defendant. The truth is that a batterer who has Aspent years abusing their partner@ should be in prison. Under the ACLU=s odd calculus of who qualifies for constitutional rights, it is only the accused or convicted batterer, never the crime victim. The AVRA@ by its terms allows for Arestrictions@ when necessary to protect the safety of any battered woman, a fact the ACLU conveniently ignores in its analysis. Finally, contrary to the ACLU=s misreading and misreporting, the amendment does not give a victim the right to Ainput into each stage ... from bail through parole.@ The amendment reserves the right to be heard to release, plea, sentencing proceedings primarily, as well as those that might implicate the victim=s interest in avoiding unreasonable delay.

A*...jeopardizes the right to a fair trial...*@

The right to attend a trial, even for victims who will also be witnesses, does not Ajeopardize the right to a fair trial.@ The ACLU=s assertion to the contrary does not make it so. No court has held that a victim=s general right to attend is a denial of the rights of an accused. Such rights have been in the laws of several states for many years without any threat to the fair trial rights of the accused.

The Ainterest in avoiding unreasonable delay@ in no way threatens defendant=s rights to effective assistance of counsel. Time needed for preparation of a defense is not

Aunreasonable delay.@ Moreover, the amendment merely requires that the victim=s interest be Aconsidered.@ Is the ACLU so afraid of our courts that they fear this simple language? In scores of other areas the ACLU champions the ability of the courts to decide cases fairly. They say this right to Aconsideration@ of Aavoiding unreasonable delay@ could Acompromise the prosecution=s case if it is not ready to proceed to trial but must do so at the victim=s insistence.@ How could the ACLU morph the word Aconsideration@ into the word Ainsistence@ unless it was done with a clear design to mislead. Are they so fearful of these simple victims= rights that they will stoop to this?

A...*hamper law enforcement*...@

Perhaps the best judge of what will Ahamper law enforcement@ is law enforcement itself. 43 of the state Attorneys General, the International Association of Chiefs of Police, The National Association of Police Organizations, the American Probation and Parole Association, the American Correctional Association, the National Troopers Coalition, the California Correctional Peace Officers Association, the International Union of Police Associations (AFL/CIO), the California District Attorneys Association, the National Criminal Justice Association, and Concerns of Police Survivors have all endorsed the amendment. They would not have done so had the dire consequences which are the subject of our opponents' speculation been credible. They are not. There is simply no evidence anywhere in America that participatory rights for victims hurt either defendants= rights or law enforcement. Assertions to the contrary are contrived and hollow. Giving victims the right to speak at plea proceedings, which victims in Arizona and elsewhere have had for more than a decade, has not led to more trials. The right to be heard is not the right to Aobstruct@ as the ACLU argues. These rights have not Abackfired@ anywhere they have been tried.

A... *impose inflexible mandates on the states*...@

Once again, the hypocrisy of the ACLU is really quite astonishing. The ACLU is all for Ainflexible mandates@ when they enforce the rights of accused and convicted offenders. Perhaps one day the ACLU will live up to the meaning of its name and creed and defend the rights of all Americans, even America=s crime victims, for whom today the ACLU and its current leaders stand sadly silent.

Letter from 5 Republican Law Professors
Statement in Opposition, July 11, 2003

1. A*We have no doubt that the law should protect crime victims, and the laws of all states do in considerable measure do that.*@

If the 5 Law Professors think the laws of all states Ain considerable measure@

Aprotect victims@ the 5 Law Professors are mistaken. They have not read Justice Department studies that have concluded to the contrary and they have failed to meet with victims whose stories of great injustice at the hands of the government are compelling and uncontradicted.

2. ABut it seems to us that the matter should be left precisely there: in the states.@

The leave it to the states approach condemns crime victims to second-class status, where victims= rights always exist in the shadow of the defendant=s superior rights and the government=s unrestrained power. If 5 Republican Law Professors find this acceptable so be it. Crime victims and most citizens find it unjust.

No government should refuse to tell a battered woman when her batterer is given a release hearing or is released.

And no battered woman should be forced by her government into silence on the matter of the release or her safety.

No government should exclude the parents of a murdered child from the courtroom during the public trial of those accused of the murder.

No government should force a victim to stand silent during the sentencing of her attacker, unable to offer an opinion on the appropriate sentence.

The parent of a murdered child should not be forced by her government into silence when the murderer of her child is given a plea bargain.

No government should force crime victims to endure years of delays without any consideration for their interests.

No woman, raped and beaten and left for dead, should be ignored by her government when she makes a just claim for restitution from her attacker.

No government should deny crime victims the right to stand in court and seek their rights.

Our federalism exists to advance liberty. When rights are written into the Constitution federalism is preserved and the cause of liberty is advanced, even as those rights restrain the power of government.

When James Madison first proposed the Bill of Rights, he was met with the same sort of criticism. Critics of Madison's proposed amendments claimed they were unnecessary, especially so in the United States, because states had bills of rights. Madison

responded with the observation that "not all states have bills of rights, and some of those that do have inadequate and even 'absolutely improper' ones." Our experience in the victims' rights movement is no different. Not all states have constitutional rights, nor even adequate statutory rights. There are 33 state constitutional amendments and they are of varying degrees of value. Madison knew that only the U. S. Constitution had the power to change the culture of our country. By including the Bill of Rights in the Constitution, Madison correctly observed, A the Constitution will have a tendency to impress some degree of respect for [the rights], to establish the public opinion in their favor, and rouse the attention of the whole community ... as [they] acquire, by degrees, the character of fundamental maxims ... as they become incorporated with the national sentiment ... ."

3. A... where fundamental human rights are in imminent jeopardy, the Constitution might need to be amended to provide a national standard.@

The 5 Law Professors may not think that Afundamental human rights are in imminent jeopardy@ when the government denies to a woman the right to speak at her batterer=s release hearing, or when it excludes the parents of a murdered child from a public proceeding, or in any of the other circumstances the amendment would address, but before they make this observation final they might want to talk to crime victims who have been treated this way by their government.

National Clearinghouse for the Defense of Battered Women
Position Paper on Proposed Victims= Rights Amendment, April, 2003

1. AWe, like the proponents of the amendment, are extremely disturbed by the way in which crime victims are treated by our criminal justice system. ... we see firsthand the tragic consequences that result from society=s and the criminal justice system=s devaluing and misunderstanding of the experiences of victimization.@

The way to change the way crime victims are Atreated@ by the system, the way to stop the Adevaluing@ of victims, is to give victims Avalue@ in the U.S. Constitution, where they now have none. Is it any wonder that victims have no value when the Constitution does not mention them? Are they not worthy of mention?

2. A[The amendment] would permit a husband who has repeatedly beaten his wife to stand before a judge and object to her release on bail, even when she is the only parent who has cared for their minor children.@

A husband who has repeatedly beaten his wife should be in prison. The fact that he isn=t is reason to fight for reforms that will put him there, it is not reason to oppose rights for all victims of violent crime.

3. A... the Amendment would require her to pay restitution to her abuser because he is considered a >victim.=@

The Amendment does not Arequire@ the payment of restitution, merely that just claims be duly considered where they are created by state or federal law.

4. A...statutory alternatives and state remedies are more suitable.@

The Clearinghouse is apparently content that the rights of battered women remain second-class rights in our justice system. Their faith that these second-class rights, which clearly have not worked, can Atruly assist victims of crime,@ bespeaks a confidence in statutes that real-world experience has not confirmed.

5. AUnfortunately, the grave injustices of being victimized probably cannot be fully addressed or remedied in the criminal justice system.@

Among the Agrave injustices@ of being victimized are those injustices inflicted by the government. They can be remedied by the criminal justice system, through a constitutional amendment.

6. AWe urge, instead, ... additional time, money and energy... .@

These things, especially money, are no cure for injustice; they are no substitute for justice. Would the Clearinghouse suggest that money is a proper substitute for the rights of the accused? One suspects not.

7. AIt is entirely unclear how the proposed amendment would increase basic courtesies and respect for victims (particularly in light of the amendment=s explicit provision for governmental immunity from civil actions).@

All the rights established are enforceable and are more than Abasic courtesies.@ Presumably the Clearinghouse would not refer to the participatory rights of defendants as Acourtesies.@ The amendment does not create Agovernmental immunity for civil actions,@ as the Clearinghouse asserts. It simply says that as a matter of the text of the Constitution, no right for money damages is created. Congress, or the states for that matter, would remain free to authorize enforcement actions in statute. But lawsuits for money damages are not an effective means of enforcing constitutional rights. The best means is provided in the amendment itself; it is the express grant of standing in Section 3.

8. A...there are particular problems with the mandatory restitution clause.@

There is no Amandatory restitution clause@ in the amendment.

9. A... it provides virtually no remedies for victims whose rights are violated.@

The Bill of Rights provides Ano remedies@ for defendants whose rights have been violated, except the inherent right to standing to assert constitutional rights. Here the grant of standing is explicit. Moreover, Congress has the power to Aenforce@ the amendment through appropriate legislation, even as the 14th Amendment is enforced.

10. A ... the constitutional financial mandate this amendment imposes upon the states would require their already overburdened governments to divert funds from agencies that provide meaningful assistance to battered women...@

The Clearinghouse does not identify the Afinancial mandate@ imposed upon the states. Does the Clearinghouse mean the cost of providing notice of proceedings to victims of violent crimes? Does the Clearinghouse think that a battered woman should have no notice of proceedings in her case, or of the release of her batterer? Is this the voice defending battered women?

11. ADefendants are facing a loss of liberty and life at the hands of the state, and their rights must not be eroded. ... the harsh reality is that the victim has very little to lose as a result of the trial.@

This view bespeaks a shallow and callous understanding about victimization and the consequences of injustice. A defendant=s potential loss of liberty is no justification for injustice toward the victim, especially when the injustice is unnecessary. The Clearinghouse asserts, Athe role of the criminal justice system is to determine whether or not the defendant committed the offense he or she is charged with, not to restore the victim.@ The goal of the system is to do justice as well as discover the truth. Such a narrow view of the role of the system is only offered when victims= rights are the issue. Surely the Clearinghouse believes the goal is to see that justice is done.

12. A[The amendment will mean] jurors will be far less likely to receive independent, truthful testimony and the possibility of a fair, reliable, and just verdict will be diminished.@

This assertion is demonstrably false. In no state where victims are given the right to be present during trial is there any evidence of the results the Clearinghouse fears. Surely they know this.

13. A... the Amendment would make it much more difficult for judges to limit testimony of >victims= at all stages of the proceeding, even if their testimony is not relevant or is so inflammatory that justice would be undermined.@

This assertion is simply wrong as a matter of law. First, nothing in the amendment gives victims the right to Atestify.@ The right to be heard is not the right to call yourself, or be called as a witness. It is the right of allocution, not testimony. Nothing in the amendment changes the rules of testimonial relevancy. Moreover, inflammatory statements that are unduly prejudicial are still prohibited by the due process clause. *Payne v. Tennessee*, 501 U.S. 808 (1991).

14. AThe proposed Amendment says victims have the right to >a final disposition of the proceedings...free from unreasonable delay.:

This is false. The amendment has no such language. An earlier version of the proposed amendment had this provision but it has been altered. None of the consequences the Clearinghouse fears could result from the current version, or from the earlier version for that matter. The right now is simply to have the victim=s interest in avoiding unreasonable delay Aduly considered.@ Surely the Clearinghouse, once it reads the amendment more carefully, cannot object to this and still speak for battered women.

15. AAs victim advocates, we need to be in the forefront of advocating for justice B which includes supporting the right of defendants to get far trials and this Amendment will erode this right.@

As Avictim advocates@ we need ... to be Aadvocating for justice@ and support the Aright of defendants... .@ As victim advocates we need to say, AJustice for all B even the victim.@

16. AThe structural integrity of our entire justice system depends on this equation B between the accused and the government, not the accused and the individual victim of crime.@

And so the defenders of battered women say there is no place in their justice system for the victim. Odd, sad, and tragically wrong.

National Legal Aid & Defender Association
Letter in Opposition, June 2, 2003

1. A There is no reason that the entirety of the Victims Rights Amendment cannot be achieved through other means.@

No reason other than more than a decade of history with Aother means@ being inadequate, and the fact that statutory rights will always be second-class rights.

2. Despite nationwide research, the proponents of the amendment have been unable to

produce any case in which such >trumping= [of victim=s rights by defendant=s rights] has actually occurred and been upheld on appeal.@

False. *Lynn v. Reinstein*, 68 P.3d 412 (Ariz. 2003), is one of many examples. And most of the cases never get to the appellate stage because victims lack standing.

3. A...rights without remedies.@

Standing is the remedy.

4. A...massive federal court oversight of the day-to-day functioning of state criminal justice systems and actors.@

Has this already happened because defendants= rights are in the U. S. Constitution? No, and the result would not be different for victims= rights.

5. A ...the system will be substantially distracted from the fundamental business of adjudicating criminal responsibility and determining sanctions.@

The fundamental business is to do justice. In the view of most of the country, even if not criminal defense attorneys, this does not require excluding the victim. Indeed justice requires that victims be treated justly also.